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VI

Contrasts to the American System

A. Introduction

In brief, we have covered the organization and structure of the American federal and state governments and said a little about their inter-relationships. As stated at the very beginning, the framers of the American Constitution brought forth a government which has endured for well over a century and a half. No serious student of American history and government entertains the thought that the American political system is well-nigh perfect and should be copied by other countries, especially those now emerging from colonial status. The least that can be said for the American system is that it works very well (for the United States, practical). No effort to alter the system of checks and balances has been made during the existence of the Federal Union. Eminent writers have frequently compared the American system to the Parliamentary system of other nations, especially France and England.

The weakness of the Executive in the French system and the short life span of the average Cabinet in

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have
~~has~~ led to comparisons which reflect much more credit on the American system because of the greater stability of the American way. The same has not been true of comparisons between the American system and the British Parliamentary method of government. Many able writers, including prominent American political scientists, have taken up the case for the Cabinet form of government as meeting the ideal criteria of sound administration better than the Presidential system.

B. Comparison of Governments

~~Let us take another look.~~ We have seen that the American Constitution has created a republican form of government. The founding fathers thought such a form necessary in order to insure the principle of popular sovereignty. In the 20th Century, several monarchies such as those of Great Britain, Holland, Belgium and Sweden have acknowledged the ultimate authority of the people. Two centuries ago, however, monarchic government was closely associated with the principle of rule by divine right. As can be seen plainly in

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the Declaration of Independence, George III's ministers were held to be responsible to him, and equally reprehensible in their actions toward the colonies. Hence it was felt that only a republican government, in which public officials are subject to frequent change, or at least criticism, though direct or indirect election, could safeguard the rule of law. Denied permanent tenure, officials could hardly lay claim to ruling by divine right.

Regardless of the form of government, one needs to look rather at its substance. The question of who or what really dominates a government is one which has bothered political scientists back to the days of Ancient Greece. The most famous [redacted] classifications came from them and are still very widely used. They distinguish three types of governments, according to the number of their political leaders: governments directed by one man, by the few, and by the many. The first was called a monarchy, sometimes a tyranny; the second, an oligarchy or an aristocracy;

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and the third a democracy.

While these classifications have been useful they are, as stated, a bit over-simplified. For example, the British Government has the form of a monarchy with a single hereditary ruler. Yet it is truly a democracy, for all the people vote for and elect Parliament which is the source of the active power of the government. Further England was for many years an aristocracy since power was concentrated in the grasp of a few wealthy, landed nobles and businessmen. The facade of this nobility still exists and England has an ample share of peers but their political influence is minimal.

On the other hand there are, however, many governments which are or were democracies in form but oligarchies in fact. Many Latin American countries fit this pattern. On the other side of the coin, most of the monarchies or tyrannies have definite traces of oligarchy. Tito is pretty clearly an absolute ruler of Yugoslavia, but he has prominent men around him on

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whom he depends heavily and who exercise great powers in their own right.

~~To find a Common denominator in~~ ~~these~~ We must conclude then that all governments exercise varying degrees of power over their citizens regardless of the form of government. ~~To limit the discussion still further~~ Let us consider only those governments where the democratic process is such that there is a contest for office between two or more candidates, and where the people vote for and elect the individual or group which is a strong element, or even the predominant element in the power process. To evaluate the effectiveness of the American system then, there is no useful purpose served in comparing it with the Administration of the USSR in spite of many similarities in their respective Constitutions. The role of the Supreme Soviet, which has 1,380 members elected on a single slate, is far different from the role of the American Congress which generally

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The successful candidate has survived party primary nominations and defeated at least one major opponent before taking his seat.

P I Furthermore, the role of the USSR's Supreme Soviet is quite distinct from that of the American Congress. The Supreme Soviet, according to the Constitution of the USSR, is the highest governmental body with legislative functions, primarily, and some judicial and executive functions as well. The American Congress does not have executive power and acts in a judicial capacity only in cases of impeachment. The ~~meetings~~ of the Supreme Soviet are usually of brief duration and most of its functions are carried on by the Praesidium between sessions.

P II The very fact that the American national government is composed of several independent organs -- the President, Congress, and the Supreme Court -- makes it as a whole a decentralized Government. The federal system, granting additional independent

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authority to the state governments, makes the total governmental picture even more decentralized. By contrast, England gives very large powers to the Prime Minister and his Cabinet, while in the U.S.S.R. the real center of the power process is localized in the 30-odd member Praesidium rather than the large two-house chamber of the Supreme Soviet. Many Latin American republics appear similar to the United States in structure and in their written constitutions, but somehow the foundations are not as strong and their histories are characterized by revolutions, military juntas and dictatorships instead of democracy.

c. Perhaps the most fruitful comparisons we can make will be to consider the United States ~~[illegible]~~ as a classic example of a successful ~~[illegible]~~ republican form of government ~~[illegible]~~ presidential or constitutional republic, and England and France as classic examples of the parliamentary

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system which stresses ministerial or Cabinet responsibility.

1. Legislative function.

1. In the Parliamentary system, political power appears to be concentrated in the legislature assembly. The legislature names as an executive a Cabinet whose members are drawn from the majority party or coalition of parties in the legislature. It dismisses the Cabinet by registering an adverse vote on a measure proposed by the Cabinet. Under this system as it operates in Israel, there is no separation of powers. All power belongs to the legislative branch.

However, this is definitely not the case in England. Although there is no constitutional separation of powers -- Britain has no written constitution -- there is a functional division. Members of the Cabinet perform three quite distinct functions: (1) As members of Parliament they vote to enact laws; (2) as members of the executive, they carry out the laws; and (3) Unless they are ministers without portfolio, as heads of government departments they convey

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the policy of the majority party to the various administrative agencies of the state. It has been many years since Parliament by a vote of no confidence has ousted a British Cabinet. For decades the British Prime Minister has been so strong that he has called elections for a new Parliament rather than yield to (pressure from) the incumbent Parliament. Actually, the strength of the British party system has made the Prime Minister, as head of the majority party, comparatively independent of Parliament. Thus there is a greater separation of powers under the British Parliamentary system than appears on the surface.

In France, however, where the average life of a government is about six or seven months, the Cabinet has never won the power and quasi-independence enjoyed in Great Britain. Consequently, the chief executive is often at the mercy of the legislature.

In both France and England, men enter the Cabinet only after having been elected to the Parliament. In

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America, however, the members of the Cabinet are freely chosen by the President. The words "freely chosen" are perhaps open to some dispute because the President has to give due weight to geographic considerations and the demands of pressure groups. However, the fact remains that he chooses them. They are not elected, although they may well have served or be currently serving (at the time of their selection by the President) in a federal or state position to which they had been elected.

Almost invariably the members of the Cabinet are chosen from the party of the President. Within that party, consideration must be given to various factions as well as geographic representation. Franklin D. Roosevelt, who had served as Governor of the State of New York before his election to the Presidency, was accused of naming too many Easterners. In 1941 four of the 10 members were from the State of New York. By contrast, Eisenhower's first Cabinet had two each from New

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York and Michigan; and one each from Ohio, Oregon, Utah, Illinois, ~~Iowa~~, Massachusetts and Texas. The Attorney General must be a lawyer. The Secretaries of Commerce and of Labor must not be strongly in disfavor with major business and labor organizations respectively.

The functions of the American Cabinet are left pretty much to the will of the President. Precedent has been established very definitely that each member is the head of and has responsibility for a major government department or agency. Beyond that, however, the Cabinet as a whole, or individual members of it, may exert great influence on the President. On the other hand, the President's closest advisers may come from other elements of the government or they may be private citizens holding no position in the Administration. Warren G. Harding, the post-World War I President, was the last chief executive to rely heavily on the Cabinet for counsel. Eisenhower has shown privately more deference

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to the Cabinet than did Roosevelt or Truman but, in addition, he has leaned heavily on other appointive officers especially Sherman Adams, his White House Chief of Staff.

The American Cabinet must be carefully distinguished from European Cabinets. In Europe the Cabinets are accountable, more or less, as a unit to their legislatures and can usually be unseated by an adverse Parliamentary Vote. In France, Prime Ministers are little more than the equals of other Cabinet members and the overthrow of the Cabinet by Parliament may merely produce a re-grouping of former office holders as nominal heads of other ministries. Sometimes a Prime Minister loses out on a Vote of Confidence and his government falls. A few days later he may be Foreign Minister in a new Cabinet. On the contrary, American Cabinet members are responsible only to the President. Congress can discharge a Cabinet member only if impeached by the House and convicted by the Senate. Obviously this process is not likely to be invoked for

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trivial reasons. Members of the farm bloc and prominent Republican politicians have urged President Eisenhower to dismiss Ezra Taft Benson whom many regard as a heavy political liability. Eisenhower, however, has steadfastly defended his Secretary of Agriculture. Under a Parliamentary system, a Cabinet member who is extremely unpopular could easily bring about the downfall of the government.

In neither England nor France can a Cabinet survive when an opposition party wins a majority of seats in the Parliament. This is not true in the United States. President Eisenhower has a Cabinet of Republicans today but both the Senate and the House of Representatives are controlled by the Democratic [redacted] Party.

2. EXECUTIVE LEADERSHIP

2. In a Parliamentary system, executive leadership comes from party control. In the United States it is often difficult for the President to control members of his own party in Congress. However, unlike [redacted] where frequently times of crisis

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have found that country without a government, party lines in the United States have a tendency to disappear when the security of the nation is threatened. President Truman found to his dismay that a combination of Southern Democrats and Republicans effectively blocked the program which his liberal Democratic supporters tried to carry out in 1946. This led Truman to mobilize public opinion behind him in the 1948 campaign by denouncing what he called the "no good 'do nothing' 80th Congress." In 1950, when the Democrats again lost control of Congress, it was seriously suggested that Truman resign. However, little attention was paid to the suggestion although such a departure from office would have been automatic in France and England under similar circumstances.

There is neither the time nor the space to discuss at length the inherent weaknesses of the French government. To explain it in a few words, it may be sufficient to say that the witnesses

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of the Constitution of 1875 which produced such cataclysmic results for the Third Republic, have by no means been eliminated in Post-War ~~[illegible]~~ France. The same ~~[illegible]~~ conditions which produce splinter parties have ~~resulted in most~~ a repetition of governments by coalition and compromise and Cabinets without a clear majority of support from a predominant political party.

In practice then, we might sum up a brief review of the executive and legislative arms of the three countries by stating that the American Executive is strong, has influence over Congress but must always struggle with it even when his own party has a majority. His Cabinet is secure as long as he supports the individual members of it, and his own tenure of four years is assured. In England, the Prime minister and his Cabinet are powerful because they represent the strong elements of the party in control of Parliament, and historically it is [illegible]

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dissolved and new elections called, than that the government will fall on a vote of confidence. In France, the tenure of governments is short because there is no single powerful political party which can command on its own a sufficient number of votes to permit anything but a government by compromise.

3. Comparative legal systems

Finally, we shall take a quick look at the comparative legal systems. The functions of the judge as lawmaker are most noticeable in the United States, exist under limited circumstances in Great Britain, and are virtually absent in France. The extraordinary judicial power in the United States can be explained largely in terms of the power of judicial review at the federal level.

The tradition of the judge as a "universalist" is an outgrowth of the common law. Theoretically, in the common law system, the judge does not make the law, he merely applies the principles of natural law to the case before him. This type

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of interpretation is especially common in frontier or primitive societies where the wise man of the tribe sits in judgment over disputes, and his decisions serve as precedents in future instances of the same sort.

The British common law grew up on this foundation. When Lord Edward Coke informed King James I that the sovereign was under no man, but under God and the law, he really meant that the King was subject only to God and the Judges. Both the King and Parliament rejected this concept, and by the beginning of the 17th century, the British Judges had retreated from this high pinnacle never to return.

The rise of Parliament to a position of pre-eminence militated against the lawmaking functions of the Judges, but it was only when Britain entered the industrial age that the Judges found their activities really circumscribed. As Parliament came face to face with the problems of an increasingly complex

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industrial civilization, more and more legislation, dealing in increasing detail with social and economic issues, ~~[illegible]~~ was based on the ~~statute~~ books. Furthermore, a larger and larger administration, often armed with judicial authority, moved into the field, charged with handling the specifics of legislation -- a task previously entrusted to the judges. Thus ~~today~~ the British legal system is based on written law, set forth by Parliament and by administrators acting under Parliamentary authority, rather than on ~~[illegible]~~ laws made by judges.

Although in the United States the legal system developed from the same sources as the British, it did so with certain outstanding differences. In the United States the principle of legislative supremacy has never triumphed de jure although at times it has achieved de facto victories. In addition, it was determined quite early in American history that, with

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one exception in the field of commercial law, there was no federal common law. Oddly enough, a sort of federal common law existed in commercial matters until the Supreme Court, in 1938, ruled that it had been unconstitutional for 149 years.

However, while there was no substantial federal common law, there was extensive use of judge-made law in most of the states. But here again the law-making functions of the judges declined first in those areas of industrial advance, leaving the judges operating on a common-law basis largely in the frontier areas. Furthermore, some states such as Florida, California and New Mexico had considerable infusions of Spanish law, while the state of Louisiana had a codified system growing out of its thoroughly French background.

Today, in consequence, all federal law, except that made by the courts in the process of judicial review, is written law devised and enacted by the Congress, often on the urgent of

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the President, and by the President himself acting in most cases under statutory warrant, but occasionally under his inherent constitutional powers. The individual states, on the other hand, present no uniform pattern. Most of the heavily industrialized urban states have extensive codification of their statutes, while the common law lingers on largely in the rural states.

If the development of the British and American legal systems over the last century and a half has been characterized by the decline of the universalist Judge, the French system of codified law, in force since Napoleon's day, was designed to prevent Judges from ever becoming universalists. The structural keystone of the French Revolution was legislature supremacy, and one of the ways to keep the legislature supreme was to thoroughly domesticate the Judiciary. Implemented by a highly centralized judicial bureaucracy, the Civil system, like the educational

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system introduced after the Revolution, was initially designed to destroy the parochialism of the ancien régime, which had been a hodge-podge of legal institutions. It should be noted here that the centralization referred to is of an administrative, not a geographical nature. While the judicial system is decentralized geographically, it is run from the center with the purpose of enforcing a uniform set of legal principles on the whole of France.

The Codes, prepared by legal scholars, are designed to set forth in clear, concise terms the exact legal consequences of any action. In other words, they are promulgated under legislative authority for the express purpose of circumscribing the judges and telling them precisely what to do under almost any foreseeable set of circumstances. Thus in France legal administration is in the hands of technicians who prepare the Codes and, in effect, technicians who administer them, with the Parliament [illegible] in

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between. In contrast with the theory of the common law, which has the judge "declaring" natural law, the theory behind the codes is basically directed toward leashing the judiciary. French judges are not intended to be oracles of natural law, and the judiciary is not allowed to compete with the legislature or to search out for itself the principles of "natural justice."

Although writers on political science and constitutional law have frequently pointed out the sharp distinctions between Anglo-American common law and the French codal system, it must be recognized that recent practice in the United States and Britain has tended in the direction of French practice. More and more the British and Americans have been replacing judicial discretion with elaborate statutory provisions which tend to resemble codes more than the common law tradition. In both England and America the myth of the judge as interpreter of [illegible], while

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the French home of lovely and admittedly bureaucratized [redacted] the administration of Justice.

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